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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,592	08/17/2005	Ronald Rodriguez	58799(71699)	9269

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EXAMINER

WHITEMAN, BRIAN A

ART UNIT	PAPER NUMBER
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1635

DATE MAILED: 05/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/510,592	Applicant(s) RODRIGUEZ ET AL.	
	Examiner Brian Whiteman	Art Unit 1635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 15-17, 19, 20, 22, 24, 25 and 27-29 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-9, 15-17, 19, 20, 22, 24, 25, 27-29 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claims 1-9, 15-17, 19, 20, 22, 24, 25, and 27-29 are pending.

The cancellation of claims 10-14, 18, 21, 23, 26, and 30-32 and the amendment to claims 3, 5-9, 15, 24 and 27 filed on 10/8/04 is acknowledged.

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-8, drawn to an adenovirus packaging cell line.

Group II, claim 9, drawn to a method of producing adenovirus comprising infecting an adenovirus packaging cell line with non-overlapping E1 deleted adenovirus which expresses DT-A or PEA.

Group III, claims 15, drawn to an adenovirus comprising a nucleic acid encoding DT-A or PEA.

Group IV, claims 16, 17, 19, 20, 22, drawn to a method of killing cancer cells using an adenovirus comprising a nucleic acid encoding DT-A or PEA.

Group V, claims 24 and 25, drawn to a method of producing an immunotoxin comprising DT-A or PEA.

Group VI, claim 27, drawn to an immunotoxin.

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Group VII, claims 28 and 29, drawn to a method of making a cell resistant to DT or PEA.

The inventions listed as Groups I-VII do not relate to a single inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical feature for the following reasons:

37 CFR 1.475(b) states:

“An international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:

- (1) A product and a process specially adapted for the manufacture of said product; or
- (2) A product and process of use of said product; or
- (3) A product, a process specially adapted for the manufacture of the said product, and a use of the said product; or
- (4) A process and an apparatus or means specifically designed for carrying out the said process; or
- (5) A product, a process specially adapted for the manufacture of the said product, and an apparatus or means specifically designed for carrying out the said process.

37 CFR 1.475(c) states:

“If an application contains claims to more or less than one of the combination of categories of invention set forth in paragraph (b) of this section, unity of invention might not be present.”

37 CFR 1.475(d) also states:

“If multiple products, processes of manufacture or uses are claimed, the first invention of the category first mentioned in the claims of the application and the first recited invention of each other categories related thereto will be considered as the main invention in the claims, see PCT Article 17(3)(a) and 1.476(c).”

37 CFR 1.475(e) further states:

“The determination whether a group of inventions is so linked as to form a single general inventive concept shall be made without regard to whether the inventions are claimed in separate claims or as alternative within a single claim.”

In view of 37 CFR 1.475 (b), 37 CFR 1.475 (c), 37 CFR 1.475 (d), and 37 CFR 1.475 (e), Group I is considered the main invention to the product first mentioned in the claims, and the first recited invention drawn to other categories related thereto, e.g. a method of making, method of use.

The technical feature linking groups II, III, IV, V, and VII appears to be an adenovirus comprising DT-A or PEA.

However, Schwarzenberger et al. (US 6,461,869) teaches an adenovirus comprising DT-A.

Groups I and VI do not require the adenovirus.

Therefore, the technical feature linking the inventions of groups I-VII does not constitute a special technical feature as defined by PCT Rule 13.2, as it does not define a contribution over the prior art.

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The special technical feature of Group I is considered to be an adenovirus packaging cell line.

The special technical feature of Group II is considered to be a method of producing adenovirus comprising infecting an adenovirus packaging cell line with non-overlapping E1 deleted adenovirus which expresses DT-A or PEA.

The special technical feature of Group III is considered to be an adenovirus comprising a nucleic acid encoding DT-A or PEA.

The special technical feature of Group IV is considered to be a method of killing cancer cells using an adenovirus comprising a nucleic acid encoding DT-A or PEA.

The special technical feature of Group V is considered to be a method of producing an immunotoxin comprising DT-A or PEA.

The special technical feature of Group VI is considered to be an immunotoxin.

The special technical feature of Group VII is considered to be a method of making a cell resistant to DT or PEA.

Accordingly, Groups I-VII are not so linked by the same or a corresponding technical feature as to form a single general inventive concept.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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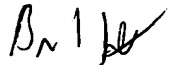
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Whiteman whose telephone number is (571) 272-0764.

The examiner can normally be reached on M-F, (700-400 EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Paras can be reached 571-272-5417. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Brian Whiteman, 1635

A handwritten signature in black ink, appearing to read 'Brian Whiteman' with a stylized flourish at the end.

**BRIAN WHITEMAN
PATENT EXAMINER**